

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Published December 30, 2011]

NOTICE OF PROPOSED RULEMAKING

Emergency Notice for Sudden Oak Death, 2011

Title 14 of the California Code of Regulations (14 CCR):

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend:

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| § 895 | Abbreviations Applicable Throughout the Chapter. |
| § 916.9 | Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids. |
| § 1052 | Emergency Notice. |
| § 1052.1 | Emergency Conditions. |
| § 1052.2 | Emergency Substantiated by RPF. |

Adopt:

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| § 1052.5. | Emergency Notice for Outbreaks of Sudden Oak Death Disease. |
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PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 A.M., on Wednesday, March 7, 2012, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter

subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., Tuesday, February 28, 2012. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 authorizes the Board to adopt rules and regulation as it determines are reasonably necessary to enable, implement, interpret or make specific PRC 4592. PRC 4750, 4750.3, 4750.4 authorizes the California Department of Forestry and Fire Protection to implement programs to detect, remove and treat SOD infected trees.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation necessary to minimize natural resource damage and spread of Sudden Oak Death in the State's private timberlands, in accordance with Public Resources Code Section 4592, Emergency Notice content. The proposed rule defines an Emergency Condition under Title 14 of the California Code of Regulations, Section 1052.1 and specifies the location, treatments, and environmental protection measures related to the removal of live and dead hardwood trees or vegetation infected by or susceptible to Sudden Oak Death disease. The proposed regulation allows for filing of an Emergency Notice instead of a Timber Harvesting Plan when operations are conducted in accordance with the proposed rule conditions of Section 1052.5, Emergency Notice for Outbreaks of Sudden Oak Death Disease. The proposed rule includes two documents incorporated by reference as follows:

Documents Incorporated by Reference

1. Notice of Emergency Timber Operations Sudden Oak Death, Form RM-66 (14 CCR Section 1052.5) (2/1/11).
2. Mitigation and Management Recommendations in the California Oak Mortality Task Force publication *Sudden Oak Death for Forestry* (rev. August 2010),
<http://www.suddenoakdeath.org/wpcontent/uploads/2010/08/ForestryGuidelines1.pdf>.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.

- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Use of the emergency notice for Sudden Oak Death is at the discretion of the landowner. The rule allows landowners to commercially harvest SOD infected trees that would otherwise require a lengthy and costly Timber Harvesting Plan permitting process.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business because the proposed rule allows landowners to commercially harvest SOD infected trees that would otherwise require a lengthy and costly Timber Harvesting Plan permitting process.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8031

The designated backup person in the event Mr. Huff is not available is George Gentry, Executive Officer of the Board, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

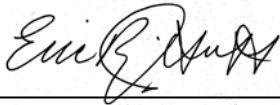
After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the

Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice.

The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Eric K. Huff
Regulations Coordinator
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Emergency Notice for Sudden Oak Death, 2011

[Published December 30, 2011]

Title 14 of the California Code of Regulations (14 CCR):

Amend:

- § 895 Abbreviations Applicable Throughout the Chapter.
- § 916.9 Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids.
- § 1052 Emergency Notice.
- § 1052.1 Emergency Conditions.
- § 1052.2 Emergency Substantiated by RPF.

Adopt:

- § 1052.5. Emergency Notice for Outbreaks of Sudden Oak Death Disease.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS

This proposed regulation makes permanent the previously effective, now expired emergency regulation initially adopted by the Board of Forestry and Fire Protection on January 5, 2011 and readopted on June 8, 2011. The proposed permanent regulation is intended to address the occurrence of "Sudden Oak Death" disease (hereafter referred to as "SOD") caused by the introduced and invasive plant pathogen, *Phytophthora ramorum*. The pathogen, a species of water mold, causes relatively rapid mortality of tanoak (*Notholithocarpus densiflorus*) and several other oak species. The disease has been known to be in the state since 2000, but has not been affecting commercial conifer species. It has been generally limited to the coastal forestlands of the wildland urban interface (WUI) around communities and towns. Conspicuous occurrences of

tanoak mortality have been seen along major highways in the Central and Northern coastal portions of the State.

The confinement of SOD occurrences to non-commercial forestlands changed in 2010. In that year the pathogen was found in the Redwood Creek Watershed in northern Humboldt County. This occurrence has the potential to affect the State's most productive and valuable redwood and Douglas-fir forests along with ecologically critical tanoak forests in the Redwood National and State Parks. The disease's impact on tanoak is also a significant threat to important cultural values of the Hoopa Valley Tribe who also hold land in the Redwood Creek Watershed.

This proposed permanent regulation is needed to establish a tree harvesting permitting system that would allow foresters and landowners to respond quickly to occurrences of the disease. The regulation would create a new category of Emergency Notice permitting under 14 CCR Section 1052 to regulate commercial harvesting of trees for purposes of isolating outbreaks of the disease. By harvesting infected trees along with nearby susceptible trees, and treating understory vegetation, it is possible to control the spread of the pathogen.

In the absence of this rule, a forester or landowner could still implement actions to control the pathogen, but such actions could not result in commercialization of trees removed. It is recognized that removal and treatment of the infected vegetation can be quite costly to the landowner. The regulated allowance for rapid commercialization of the trees removed could help to partially or wholly offset this expense. Rendering SOD removal projects cost-neutral could result in regional economies of scale and accompanying collective efforts to eradicate occurrences of the pathogen.

Background on Sudden Oak Death Life History and Arrival to California:

The SOD pathogen, *Phytophthora ramorum* appears to have been introduced to California forests sometime in the 1990s through the out-planting of infected nursery stock in three separate locations near San Francisco Bay (at Big Sur, Santa Cruz County and Mt. Tamalpais). By the time *P. ramorum* was identified as the causal pathogen of Sudden Oak Death in 2000, it had already spread to several hundreds of acres in each of these locations. Although many native California plants were later discovered to host the pathogen with varying degrees of damage, outright mortality is most common in tanoak and several red oak species.

P. ramorum is presently established in a number of coastal California forests containing tanoak or live oak. Once established in a wildland environment, the pathogen expands its range by wind-driven rain, spreading its inoculum (largely sporangia) to nearby susceptible trees. Spread occurs mainly during warm spring rains. While localized spread is most common, sporangia have been shown to travel distances of up to three (3) miles during large storm events.

The disease has continued to expand since 2000 and now is established in a series of small outbreaks that stretch from Brookings, Oregon south to Monterey County, California. While the disease had not been affecting commercial timberlands and has generally been limited to the forestlands of the wildland urban interface (WUI) around communities and towns, that situation has recently changed. The pathogen has been found in the Redwood Creek Watershed in northern Humboldt County, potentially affecting the State's most productive and valuable redwood and Douglas-fir forests along with ecologically critical tanoak forests in the Redwood National and State parks. This finding has demonstrated the need for more tools and resources to slow the spread and control the disease. While only 1% of the high risk habitat for the pathogen has been affected in Humboldt County, spot infections have been observed to serve as the mechanism for rapid expansion of the disease. For example, since 2004, the one known infection area in Humboldt County near the town of Redway has grown at a rate of approximately 1,450 acres/year on average, and now impacts more than 10,000 acres.

Board Findings:

- The Board finds legislative mandates provided in the "Sudden Oak Death Management Act of 2002," Public Resources Code 4750 *et seq.* support the Board's action. This support is illustrated in the first sentence of Section 4750.3 in which it states that, "It is hereby declared to be the policy of the state, to the extent feasible, to stop the spread of sudden oak death and conserve oak trees and other plant species affected by the disease."
- The Board finds that regulatory amendments, within the scope of existing legislation and the Forest Practice Rules (Title 14 CCR, Chapters 4, 4.5 and 10), are necessary to provide regulatory relief for expedited and cost-effective treatments of SOD infected trees and vegetation.
- The Board finds that allowing filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions creates regulatory relief.
- The regulation is applicable to locations on private land subject to the Forest Practice Act (PRC 4511 *et seq.*) in certain coastal counties where there is a lab tested confirmation of the presence of SOD. The geographic areas where the regulation can be implemented are the 14 counties in California currently affected by the SOD disease. Also, Del Norte and San Luis Obispo counties are applicable locations because these counties have high or very high risk of future infestations.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation necessary to minimize natural resource damage and spread of Sudden Oak Death in the State's private timberlands, in accordance with Public Resources Code Section 4592, Emergency Notice content. The proposed rule defines an Emergency Condition under Title 14 of the California Code of Regulations Section 1052.1 and specifies the location, treatments, and environmental protection measures related to the removal of live and dead hardwood trees or vegetation infected by or susceptible to Sudden Oak Death disease. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of Section 1052.5, Emergency Notice for Outbreaks of Sudden Oak Death Disease.

The specific purpose of the proposed rule is to 1) eradicate or control the spread of Sudden Oak Death disease; 2) allow filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of Section 1052.5, Emergency Notice for Outbreaks of Sudden Oak Death Disease; 3) establish the terms and conditions for operations to remove infected or susceptible trees and vegetation, and; 4) establishes a permit form that facilitates disclosure and evaluation of the project.

Section 895 is amended to add the abbreviation of Sudden Oak Death (SOD). This is needed to ensure clarity and brevity of the terminology.

Section 916.9 (t) (8) specifically allows harvesting of SOD infected or symptomatic trees from WLPZs using an emergency notice that would otherwise be prohibited by this section.

Section 1052 (a) establishes the agency form that must be submitted by the timber harvesting applicant. A form is needed to ensure disclosure of the emergency conditions and provide other information regarding the intent for a sanitation plan to prevent the spread of the disease.

Section 1052.1(f) establishes the new emergency condition for SOD. An emergency condition must be defined and disclosed, in accordance to PRC 4592, prior to allowing operations to be permitted using an Emergency Notice. Subsections (1) – (4) limit the locations where SOD removals can occur to "isolated areas". The intent of permitting removal on isolated infection areas is to focus eradication and control action on new outbreaks, away from inundated areas, for purposes of controlling the outer perimeter of the spread to new previously uninfected watersheds. Subsection (5) identifies the specific counties where the emergency can be applied. This subsection limits use of the Notice to the 14 coastal counties in California where known outbreaks of the disease are found or have high risk of new outbreaks.

Section 1052.2 (a) lists SOD outbreaks as a presumption for the declaration of an emergency. This amendment is needed so the narrative provided by the Registered Professional Forester (RPF) can discuss SOD for substantiating the emergency and filing of emergency notice. It identifies that confirmed SOD infections are a basis for meeting the “likely to die” criteria in 14 CCR Section 1052, and thus allowing uninfected but susceptible trees to be harvested under the Emergency Notice. The requirement in the subsection for confirmation of infection through certified lab testing ensures that bona fide SOD projects are being undertaken.

Section 1052.2 (b) is a reorganization of existing emergency conditions situations related to insect mortality. Amendments to this section are not related to the SOD emergency conditions are reorganized solely for clarity.

Section 1052.5 establishes the terms and conditions that the RPF must follow to implement an operation under the SOD Emergency Notice.

Section 1052.5 (a)(1) states that there must be a laboratory test that confirms the presence of SOD.

Subsection 1052.5 (a)(2) is a requirement for the RPF to seek to encompass the entire area of new infestation in the Emergency Notice area of operations. This is needed to ensure effective control of new SOD outbreak areas. The subsection recognizes an emergency notice for SOD project may not be able to encompass the entire infestation because of ownership or accessibility issues.

Subsection 1052.5 (a)(3) establishes a requirement for concurrence with CAL FIRE on which trees or vegetation should be removed and how the operation will control or avoid further spread of the disease as part of the operation. This is a critical need to ensure that effective and appropriate vegetation treatments are taken to control the disease and inappropriate actions that could affect the environment are avoided.

Subsection 1052.5 (a)(4) limits the harvesting of trees to those hardwood trees infected with SOD or host hardwood trees and other vegetation within 330 feet of the infected trees or vegetation. This is needed to eradicate infected trees and to remove host trees near infected trees that may be infected, but not yet symptomatic of SOD.

Subsection 1052.5 (a)(5) generally restricts the harvest of conifer trees, as these trees are not the primary hosts of SOD and do not extensively spread the disease.

Subsection 1052.5 (b) establishes the operational and permit filing disclosure requirements for an RPF filing an Emergency notice for SOD.

Subsection 1052.5 (b)(1) requires the RPF to provide notification of the proposed operation to public trust agencies who may provide input for the project to address potential adverse environmental impacts associated with the operation.

Subsection 1052.5 (b)(2) and (3) allow the removal of infected and susceptible host hardwood trees or other vegetation within a watercourse or lake protection zone (i.e. a streamside vegetative buffer). This is needed to effectively waive the prohibition in the FPRs on intensive harvesting in WLPZs and prohibition of “in-lieu or alternative” practices that are typically not allowed for Emergency Notice operations pursuant to 14 CCR Section 1052 (c). The subsection restricts conifer trees from being removed from these areas because of the importance of live and dead conifer trees in riparian habitats as down logs, future in-stream woody debris, and thermal cover.

Subsection 1052.5 (b)(4) establishes the operational procedures to minimize or avoid impacts to state and federally listed species. The requirements were based on technical advice provided by the public trust agencies.

Subsection 1052.5 (b)(4) (A) and (B) requires the RPF to identify listed species and incorporate habitat requirements to ensure compliance with State and Federal Endangered Species Acts. The subsection requires use of the California Natural Diversity Database, consultation with USFWS field offices, and consultation with CAL FIRE to determine any listed species in the project area and assess other nearby projects which need to be considered to avoid cumulative effects.

Subsection 1052.5 (b)(4)(C) includes general/non-specific technical advice provided by public trust agencies to minimize or avoid take to federally species and minimize or prevent adverse impacts the beneficial uses of water in compliance with regional water board water quality requirements.

Subsection 1052.5 (b)(4)(C)(i) requires timber operations, such as use of roads and landings, to be adjusted to avoid impacts to species critical habitat. Subsection (ii) further requires that operational areas be designated to retain equipment in areas of least sensitivity to critical habitat.

Subsection 1052.5 (b)(4)(C)(iii) establishes protection requirements and operational limitations for harvesting conducted in watercourse and lake protection zones and channel zones. While the proposed rules in this section (see Section 1052.5 (b)(2)) allow for timber harvesting in these areas, restrictions on use of heavy equipment in the zones in accordance with the FPRs stated in this section are retained. The intent of Sections 1052.5 (b)(2) and 1052.5 (b)(4) (D)(iii) is to allow harvesting, removal, or other treatments of trees and vegetation which are infected or susceptible to SOD, but restrict the use of heavy equipment in such activities.

Subsection 1052.5 (b)(4)(C)(iv) is a species take avoidance best management practice needed to ensure that predators to federally listed species are not attracted to timber operation sites.

Subsection 1052.5 (b)(4)(C)(v) is included to address actions to be taken to suspend operations until a federally listed animal species have left the work area.

Subsection 1052.5 (b)(4)(C)(vi) and (viii) are requirements to protect beneficial use of water and riparian areas. Subsection (vi) prohibits operations on saturated soil conditions as defined in the FPRs. This requirement is needed because under existing FPRs operations can be conducted on saturated soils if, at the determination of the licensed timber operator, conditions will not result in a significant sediment discharge to watercourses. Because this emergency notice allows intensive operations around watercourses and other substantial clearing of hardwoods in upland areas, all operations on saturated soils are prohibited to ensure water quality is protected. Subsection (viii) prohibits disturbance of soil resulting from site preparation and burning of vegetative debris near water courses to prevent erosion and sediment discharge to watercourses.

Subsection 1052.5 (b)(C)(vii) prohibits tree felling operations in watercourse and lake protection zones during the hottest and driest periods of the summer. This requirement is included to minimize initial thermal impacts to heat sensitive watercourses and the salmonid species associated with coastal watercourses.

Subsection 1052.5 (b)(C)(ix) is a list of standard non-discretionary permit timber operations restrictions listed in the FPRs under Section 1038 Exemptions. These limitations are routinely used by the Department to ensure that operations conducted under discretionary permits, which have limited review by the Department, minimize potential significant adverse environmental impacts to the environment.

Subsection 1052.5 (b)(5) establishes reforestation requirements for conifer trees should they be removed below certain stocking standards.

Subsection 1052.5 (b)(6) requires permit tracking of emergency notices for outbreak of SOD. This information will be provided to regional water boards and allow their assessment of consistency of the projects with basin plans.

Subsection 1052.5 (c) requires disclosure of a sanitation plan that describes how equipment used in the operation will be cleaned to minimize the risk of spread of SOD to uninfected areas. It includes a document published by the California Oak Mortality Task Force containing best management practices for controlling the spread of SOD during timber operations. The document is incorporated by reference.

ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several alternatives to the proposed regulation.

Alternative 1: No Action

This alternative would preserve the status quo by not adopting a permanent regulation as the follow on to the now expired emergency regulation. No further action by the Board would be taken to assist landowners and local governments with SOD control and eradication efforts. This alternative was rejected because it conflicts with the statutory direction provided by the Sudden Oak Death Management Act of 2002 and limits options for control or eradication of a known invasive-exotic pathogen.

Alternative 2: Allow Cal Fire to determine material to be removed

This alternative would have required the Forest Pest Specialist to independently work with the RPF to determine which SOD vegetation should be removed. While components of this alternative are included in the proposed regulation to ensure quality control, this alternative was rejected because the extent of potential significant environmental impacts could not be assessed in the regulation as a result of not specifying which vegetation was to be removed.

Alternative 3: Allow harvesting of any SOD infected vegetation

This alternative would have allowed removal of any SOD infected or susceptible vegetation in any location of any watershed in the counties listed in the regulation. This alternative would have permitted the widest eradication and control of infected vegetation. This alternative was rejected because the Board intended to focus on isolated outbreaks and controlling spread in geographic locations that were not already inundated with SOD.

Alternative 4: Expand the list of counties where the regulation would apply.

This alternative would have expanded the counties where a SOD emergency notice could be filed to those outside the coastal counties in California and include counties which have been assessed to be at risk for the spread of SOD but are not currently detected as having been infected with SOD. This alternative was rejected because the Central Valley Regional Water Quality Control Board does not have a categorical waiver to its waste discharge report for this type of emergency notice for areas covering many inland counties with SOD risk under their jurisdiction.

Alternative 5: Adopt the Proposed Regulation as Proposed

This is the preferred alternative and would result in the adoption of a regulation that makes permanent the emergency regulation adopted by the Board in January 2011 and readopted in June 2011. While this alternative may not result in the complete eradication of Sudden Oak Death, it does provide a new tool for professional foresters and landowners toward that objective. This alternative

would result in effective operations to stem the tide of SOD while providing protections to public trust resources and is therefore proposed for adoption.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has evaluated potential significant adverse environmental effects associated with the emergency regulation. Included in the regulation are requirements developed to mitigate any potential adverse environmental effects to a level of less than significant. The primary potential adverse environmental impacts are related to potential widespread removal of infected or host hardwood tree species in watercourse and lake protection zones. Harvesting and removal of this material has the potential to create localized reduction of large woody debris that may in the future be used for in-stream ecosystem functions. Additionally, removal of host or infected hardwood trees in WLPZs may reduce shade and microclimates which ameliorate the transfer of solar heat to fish bearing waters. The most prevalent situations for these types of potential adverse impacts would be in a setting where SOD is widely spread near stream courses and the forest riparian vegetation is dominated by tanoak and/or other hardwood tree species that are host for SOD and actively generate spores which can be transferred to other host species.

Other potential adverse environmental impacts, due to implementation of the regulation, are related to affects to the threatened northern spotted owl (*Strix occidentalis caurina*) (spotted owl), threatened marbled murrelet (*Brachyramphus marmoratus*) and their federally designated critical habitats. Impacts of actions similar to the proposed regulation, along with implications of impacts related to not implementing action to control the SOD, have been outlined in a Biological Opinion issued by the US Fish and Wildlife Service for SOD areas in southern Oregon in January of 2009. The Biological Opinion addresses potential impacts due to the implementation of Sudden Oak Death eradication activities that may affect listed species on public lands administered by the Rogue River–Siskiyou National Forest (Forest) and the Coos Bay District (District) Bureau of Land Management (FWS TAILS #: 13420-2009-F-0022).

The Board finds the regulation has incorporated mitigation measures that will eliminate or substantially lessen the identified potential significant adverse effects on the environment. Mitigation measures include:

- Compliance with all rules and regulations of the Forest Practice Act;
- Restriction from removal of conifer trees;
- Restrictions on operational methods and timing of operations used to harvest infected or susceptible trees (see 14 CCR 1052.5).
- Consultation with Cal Fire Pest Specialist prior to submission of the emergency notice to ensure harvesting is limited to necessary hosts and

infected trees; site specific protection measures for the beneficial uses of water are developed; and appropriate sanitation measures are taken to avoid further spread of infected material as a result of the harvesting operations.

- Public trust agency project notification and opportunity for incorporating agency input into project design.
- Incorporation of take avoidance technical assistance received from the US Fish and Wildlife Service, national Marine Fisheries Service, and North Coast Regional Water Quality Control Board.

The Board finds the remaining unavoidable environmental impacts, if any, are acceptable in light of the environmental, economic, legal, social, and other considerations, because the benefits of the regulation outweigh the significant and adverse impacts. With implementation of these mitigations, effects will be substantially lessened or eliminated. However, all impacts may not be avoided, particularly related to impacts on wildlife habitat, visual screening, or localized protection of beneficial uses of water. If any impacts remain, they are likely minor and more than overridden by the catastrophic effects resulting from expansion of the Sudden Oak Death disease, subsequent loss of forested conditions, diminution of forest ecosystem values, and increased threat of wildfire due to increased dead fuel loading that threatens life, property, human health, and natural resources.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has considered alternatives that would lessen any adverse impact on small businesses. Alternatives included limiting the inclusion in the rule of the technical advice for protection of federal listed species. Reduction in the prescriptive requirements necessary to conduct this SOD operation could reduce the operating cost for those choosing to take control actions on their property using the Emergency Notice permit. This alternative was rejected because it did not minimize the potential for take a Federalist species.

The Board also considered allowing a wider variety of SOD infected conifer species to be removed as part of the permit. This would have resulted in landowners recovering greater revenues from harvested trees and helped offset the expense of harvesting low value hardwood trees. This alternative was rejected as these trees are not the primary hosts of SOD and do not extensively spread the disease.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated the regulation should not have any adverse economic impact on any business. Use of the emergency notice for Sudden Oak Death is

discretionary to the landowner. The rule allows landowners to commercially harvest SOD infected trees that would otherwise require a lengthy and costly Timber Harvest Plan permitting process. The length of time and expense need to prepare a THP is a great hindrance as these control efforts require immediate action.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The State Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Letter from United States Department of the Interior, California Department of Redwood Parks and Recreation, September 29, 2010.
2. Letter from Hoopa Valley tribal Council, dated September 28, 2010.
3. Letter from the University of California Humboldt County Cooperative Extension, dated October 4, 2010.
4. Summary titled: Mitigation measures to prevent the spread of sudden oak death during commercial timber operations under Department of Food and Agriculture regulation in zone of infestation, State Board of forestry and fire protection 2005.
5. Resolution: Declaration of revise zone of infestation for Sudden Oak Death, State Board of Forestry and Fire Protection. July 2004.
6. Sudden Oak Death Guidelines for Forestry, California Oak Mortality Task Force, April 2008.
7. Sanitation measures to minimize pathogen spread, California Oak Mortality Task Force.
8. Sudden Oak Death Best Management Practices in Zone of Infestation Regulated Area, California Oak Mortality Task Force, 2002.
9. Kliejuanas, J. United States Forest Service. August 2003. A Pest Risk Assessment of *Phytophthora ramorum* in North America.

10. California Department of Food and Agriculture plant quarantine manual sections 3700 Oak Mortality Disease Control, May 2008, and section 301.92, *Phytophthora ramorum* reported 2007.
11. Public Resources code 4750 *et seq.*
12. Biological Opinion addresses potential impacts due to the implementation of Sudden Oak Death eradication activities that may affect listed species on public lands administered by the Rogue River–Siskiyou National Forest (Forest) and the Coos Bay District (District) Bureau of Land Management (FWS TAILS #: 13420-2009-F-0022).
13. CAL FIRE FRAP. Map of Sudden Oak Death Zone of Infestation, January 2005.
14. USDA FS, State and Private Forestry-Forest health Protection. Sudden Oak Death and Oak Mortality in California. An Assessment of Sudden oak Death and Oak Mortality, 2000-2005.
15. Valachovic, Y. Nov. 2010. Background to exemption change for Sudden Oak Death. UC Cooperative Extensive Service.
16. Letter from California Central Valley Regional Water Quality Control Board, December 6, 2010.
17. Letter from California North Coast Regional Water Quality Control Board, December 6, 2010.
18. Letter from National Marine Fisheries Service, December 20, 2010.
19. Letter from United States Fish and Wildlife Service, January 12, 2011.

Government Code § 11346.2(b)(6): Duplication with federal regulation

In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Initial Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

The following revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~strikeout~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

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Note: Authority cited: Sections 4551, 4551.5, and 21082, Public Resources Code. Reference: Sections 4511, 4512, 4513, 4521.3, 4522, 4522.5, 4523-4525, 4525.3, 4525.5, 4525.7, 4526, 4526.5, 4527, 4527.5, 4528, 4551, 4551.5, 4552, 4582, 4750, 4750.3, and 4750.4, and 21080.5, Public Resources Code.

Amend 14 CCR § 916.9. Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids.

*******(t) Emergency notices** - No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under emergency notices except for:*****

*******(8) The harvest of trees or vegetation designated for removal pursuant to 14 CCR § 1052.5 to address Sudden Oak Death that are:**

(A) symptomatic of the pathogen that causes Sudden Oak Death and confirmed infected by a certified lab; or

(B) host hardwood trees that could spread the pathogen.

(u) Salvage logging - *****

Note: Authority cited: Sections 4551, 4562.7 and 21000(g), Public Resources Code. Reference: Sections 751, 4512, 4513, 4551.5, 4750, 4750.3, 4750.4, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code.

Amend 14 CCR § 1052. Emergency Notice.

(a) Before cutting or removing timber on an emergency basis, an RPF on behalf of a timber owner or operator shall submit a Notice of Emergency Timber Operations to the Director, on form RM-67 (1/1/10), ~~or~~ or form RM-65 (1052.4)(1/1/10) for a Fuel Hazard Reduction emergency, or form RM-66 (1052.5) (2/1/11) for a Sudden Oak Death emergency, herein incorporated by reference, as prescribed by the Director. The notice shall include, but not be limited to, the following: *****

Note: Authority cited: Sections 4551 and 4552, Public Resources Code. Reference: Section 4592, 4750, 4750.3, and 4750.4, Public Resources Code.

Amend 14 CCR § 1052.1. Emergency Conditions.

The following are conditions that constitute an emergency pursuant to 14 CCR § 895.1: *****

***** **(f) An isolated infestation of Sudden Oak Death (caused by *Phytophthora ramorum*), in the locations listed below, where such treatments are intended to eradicate the infestation or significantly slow the spread of the disease. For the purpose of this rule an isolated infestation is:**

(1) an infestation located in a planning watershed where SOD had not previously been noted; or

(2) an infestation located in a planning watershed that is greater than 1 mile from a known SOD infestation; or

(3) a new infestation within a planning watershed where all known previous SOD infestations within the ownership have been or will be subject to control or eradication efforts; or

(4) a location where landowners seek to contain an infestation, even though some landowners have not made proactive efforts within a planning watershed, and the Department's Pest Specialist determines that control efforts may be effective.

(5) An isolated infestation is limited to locations in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Mateo, San Luis Obispo, Santa Clara, Santa Cruz, Solano, and Sonoma.

The following are conditions that constitute a financial emergency as defined in 14 CCR § 895.1: ***** at the completion of timber operations.

Note: Authority cited: Sections 4551, 4552, and Public Resources Code. Reference: Section 4592, 4750, 4750.3, and 4750.4, Public Resources Code.

Amend 14 CCR § 1052.2. Emergency Substantiated by RPF.

The RPF preparing the Notice of Emergency Timber Operations shall describe the nature of the emergency and the need for immediate cutting in sufficient detail so that the reason for the emergency is clear. ~~Where tree killing insects have killed and are likely to kill trees within one year on timberland, an emergency is presumed to exist. Trees will be considered likely to die when they are determined, by an RPF, to be a high risk by either:~~ An emergency is presumed to exist where:

(a) Trees or vegetation have been confirmed to be infected with the pathogen that causes Sudden Oak Death through testing by a lab certified by the United States Department of Agriculture, and the RPF has determined that the pathogen is likely to spread to adjacent trees or vegetation, or

(b) Tree killing insects have killed and are likely to kill trees within one year on timberland. Trees will be considered likely to die when they are determined, by an RPF, to be high risk by either:

(1a) Risk classification systems including Smith et al., 1981; The California pine risk-rating system: its development, use, and relationship to other systems; In Hazard-Rating Systems in Forest Insect Pest Management, Hedden et al., eds. USDA Forest Service General Technical Report WO - 27, pp. 53-69; Ferrell. 1989; Ten-year risk-rating systems for California Red Fir and White Fir: development and use; USDA Forest Service General Technical Report PSW-115, 12p.; or similar risk-rating systems recognized by the profession; or

(2b) Where evidence of a current beetle attack exists (i.e. existence of boring dust, woodpecker feeding, or recent top kill) and these trees are within 100 feet of multiple tree kills. Such trees shall be marked by an RPF or the supervised designee before felling.

Note: Authority cited: Sections 4551, 4552 and 4554, Public Resources Code. Reference: Section 4592, 4750, 4750.3, and 4750.4, Public Resources Code.

Adopt 14 CCR § 1052.5. Emergency Notice for Outbreaks of Sudden Oak Death Disease.

(a) The RPF preparing the Emergency Notice shall do all of the following:

(1) provide as part of the Emergency Notice the certified lab testing results validating that trees or vegetation in the infestation area are infected with *Phytophthora ramorum*, the pathogen responsible for SOD;

(2) seek to encompass the entire infestation area and landownership(s) necessary to undertake effective control or eradication in the area covered by the Emergency Notice, however, the Emergency Notice is not required to encompass these areas;

(3) obtain written concurrence from a Department Forest Pest Specialist or Department designee regarding tree and vegetation treatments or removal and strategies to control or suppress the SOD infestation pursuant to 14 CCR § 1052.5 (c);

(4) designate for treatment or removal the host hardwood species in the infested areas and within 330 feet of the infestation area to control the spread of SOD consistent with Forest Pest Specialist concurrence in (3) above;

(5) avoid designation of conifer trees for treatment or removal except as necessary to facilitate the removal of host hardwood species, the salvage of conifer trees accidentally damaged during timber operations, or as specified by a Department Forest Pest Specialist for purposes of controlling the spread of SOD.

(b) Timber operations conducted in accordance with 14 CCR § 1052.5 (a) above shall comply with all rules and regulations of the Board. A person conducting timber operations under an Emergency Notice for Outbreaks of Sudden Oak Death Disease shall comply with all operational provisions of the Forest Practice Act applicable to a plan as defined in 14 CCR § 895.1 with the following exceptions or additional requirements:

(1) The RPF shall provide written proof of notification regarding the proposed submission of an Emergency Notice for SOD eradication to the NMFS, DFG, U.S. Fish and Wildlife Service (USFWS), and the applicable regional water quality control board. Written notification shall be received by NMFS.

1 DFG, USFWS, and the applicable regional water quality control board at least 10 working days prior to
2 submission of the Emergency Notice.

3 (2) Tree and vegetation removal or treatment within WLPZ areas shall be permitted and limited
4 to symptomatic hardwood trees and shrubs that are infested with SOD or host hardwood trees that will
5 continue to contribute to the spread of SOD. Conifer trees shall not be removed in WLPZs.

6 (3) WLPZ harvesting restriction for Class I and II watercourse pursuant to 14 CCR § 916.3
7 [936.3, 956.3], subsection (f) do not apply.

8 (4) Timing and methods of operations shall avoid impacts to state and federally listed species.
9 Below are required practices to avoid or minimize adverse effects to state and federally listed species to
10 comply with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The practices are
11 designed to reduce adverse impacts to listed species, but do not guarantee that activities will not result in
12 “take”.

13 (A) The RPF preparing the Emergency Notice shall evaluate and incorporate habitat
14 requirements for fish, wildlife, and plant species using the California Natural Diversity Database
15 maintained by the DFG, local knowledge of the planning watershed, and consultation with the
16 Department regarding other plans in the Emergency Notice area.

17 (B) RPFs shall contact the appropriate United States Fish and Wildlife Service field offices
18 websites to obtain preliminary species lists and determine which species may be in the area and possibly
19 affected by timber operations.

20 (C) The following general practices for protection of species shall be implemented in all areas:

21 (i) The exact location of harvesting sites and methods shall be adjusted to minimize the
22 temporary or permanent impacts to critical habitat for any federally-listed species. Access
23 roads, staging areas, and landings shall be located to avoid species habitats and designated
24 critical habitat.

25 (ii) Clearly visible flagging or temporary fencing shall be placed around habitat or around

1 designated logging roads, landings, and staging areas to ensure vehicles and equipment
2 remain within well-defined project boundaries.

3 (iii) Timber operations shall avoid impacting streambeds and banks in channel zones or
4 other portions of the WLPZ for all watercourses to the extent feasible, consistent with 14 CCR
5 §§ 916.3 (c), 916.4(d) and 916.9 (e). The restrictions for timber operations in channel zones
6 pursuant to 14 CCR § 916.9 (e) are herein modified to permit timber falling, removal
7 consistent with this subsection, or other treatments of trees and other vegetation symptomatic
8 of the pathogen that causes Sudden Oak Death or host hardwood trees that could spread the
9 pathogen.

10 (iv) All trash that may attract predators of federally-listed species shall be removed from
11 work sites or completely secured at the end of each work day.

12 (v) If a federally-listed animal species is observed within a designated work area and
13 cannot be avoided, all work shall stop until the animal leaves the work area.

14 (vi) No timber operations shall be conducted on saturated soil conditions.

15 (vii) No tree felling operations from July 15 to September 30 that reduce overstory canopy
16 cover in WLPZs.

17 (viii) No mechanical site preparation, broadcast burning, or pile burning in all WLPZs.

18 (ix) Operations shall be conducted in accordance with conditions stated in 14 CCR § 1038
19 (b)(1),(2),(3),(4),(5),(6),(7), (8), and (10).

20 (5) Where present prior to the start of timber operations, post harvest stocking standards specified
21 in 14 CCR § 912.7[932.7, 952.7], subsection (b)(2) shall be met with group A species. Where stocking of
22 Group A species is not sufficient to meet the stocking standards of 14 CCR § 912.7[932.7, 952.7],
23 subsection (b)(2), post treatment stocking shall meet those stated in 14 CCR § 913.4 [933.4, 953.4],
24 subsection (b), Rehabilitation of Understocked Area Prescription. The percentage of stocking
25 requirements met with Group A species on a point count basis shall be no less than the percentage of the
basal area they comprised before harvesting.

1 (6) The Department shall track the number of Emergency Notices for outbreaks of SOD, the
2 acreage treated under the notices, and the WLPZ acreage treated under the notices, and report the results
3 to the Board bi-annually.

4 (c) The RPF shall describe the strategies employed which will be utilized to control or suppress the SOD
5 infestation on the harvest area along with those measures to be used to minimize the risk of spreading
6 *Phytophthora ramorum* from the logging area by way of infected soil and infected host material. In
7 developing such strategies, the RPF shall draw from the list of Mitigation and Management
8 Recommendations in the California Oak Mortality Task Force publication *Sudden Oak Death for*
9 *Forestry* (rev. August 2010), [http://www.suddenoakdeath.org/wp-](http://www.suddenoakdeath.org/wp-content/uploads/2010/08/ForestryGuidelines1.pdf)
10 [content/uploads/2010/08/ForestryGuidelines1.pdf](http://www.suddenoakdeath.org/wp-content/uploads/2010/08/ForestryGuidelines1.pdf), herein incorporated by reference.

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12 Note: Authority cited: Sections 4551, 4551.5, 4552, 4553, and 4592, Public Resources Code. Reference:
13 Sections 4513, 4554, 4561, 4562, 4584, 4592, 4750, 4750.3, 4750.4, 21001(f) and 21080(b)(4), Public
14 Resources Code.

15 end